

# CAUSE *of* ACTION

## INSTITUTE

Pursuing Freedom & Opportunity through Justice & Accountability<sup>SM</sup>

May 17, 2019

### **Via Electronic Mail**

Environmental Protection Agency  
Attn: FOIA Requester Service Center  
1200 Pennsylvania Ave NW (2822T)  
Washington, DC 20460  
E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

### **Re: Freedom of Information Act Request**

Environmental Protection Agency:

I am writing on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit strategic oversight group committed to ensuring government decision-making is open, honest, and fair.<sup>1</sup> In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

By executive order, dated January 31, 2019, President Trump required the head of each agency administering a “covered program”<sup>2</sup> to submit a report to the President, identifying “any tools, techniques, terms, or conditions that have been used or could be used, consistent with law...to maximize the use of iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in contract, sub-contracts, purchase orders, or sub-awards that are chargeable against Federal financial assistance awards for infrastructure projects. In preparing this report, the agency head shall take care to analyze whether covered programs...would support...the imposition of a requirement to use iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in contracts, sub-contracts, purchase orders, or sub-awards that are chargeable against such Federal financial assistance awards.”<sup>3</sup> Additionally, the

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<sup>1</sup> See CAUSE OF ACTION INST., *About*, [www.causeofaction.org/about/](http://www.causeofaction.org/about/).

<sup>2</sup> Section 2(e) of Strengthening Buy-American [Exec. Order No. 13858, 84 Fed. Reg. 24 (Jan. 31, 2019).] officially defines a covered program as, “any program for which a focus of the statutory authorities under which it is administered is the award of Federal financial assistance for the alteration, construction, conversion, demolition, extension, improvement, maintenance, reconstruction, rehabilitation, or repair of an infrastructure project in the United States[.]”

<sup>3</sup> Exec. Order No. 13858, 84 Fed. Reg. 24 (Jan. 31, 2019).

report must include a detailed explanation of the “strategy, plan, or program developed to satisfy the requirement” of the order.<sup>4</sup>

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, CoA Institute requests access to the following records:<sup>5</sup>

1. The report compiled by the Environmental Protection Agency and/or Administrator Andrew Wheeler in response to the Executive Order 13858, and any letters or memorandum related to drafts of the report.
2. All communications between the Environmental Protection Agency and the White House regarding Executive Order 13858, its requirements, and its reporting mandates.
3. All internal communications within the Environmental Protection Agency related to Executive Order 13858.

The time period for this request is January 31, 2019 to the present.<sup>6</sup>

If the agency can produce the report responsive to Item 1 while it conducts a search for and processes records responsive to the remainder of this request, CoA Institute requests that it please do so.

For the purposes of this request, please omit daily news clippings or other mass mailings unless there is commentary related to them. For all items of this request, if the agency uncovers responsive email records, CoA Institute’s request specifically seeks the entirety of any email chain, any portion of which contains an individual email message responsive to this request, *i.e.*, the entire email chain is responsive. If the agency identifies responsive records that it deems outside its legal control (*e.g.*, congressional records), CoA Institute requests that the agency inform it that such records exist. If responsive records already have been made public in response to another FOIA request, CoA Institute requests that those records be produced first, while the agency conducts its search and review for additional records. If the EPA

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<sup>4</sup> *Id.*

<sup>5</sup> The term “record” means the entirety of the record any portion of which contains responsive information. *See Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review*, 830 F.3d 667, 677–78 (D.C. Cir. 2016) (admonishing agency for withholding information as “non-responsive” because “nothing in the statute suggests that the agency may parse a responsive record to redact specific information within it even if none of the statutory exemptions shields that information from disclosure”).

<sup>6</sup> For purposes of this request, the term “present” should be construed as the date on which the agency begins its search for responsive records. *See Pub. Citizen v. Dep’t of State*, 276 F.3d 634 (D.C. Cir. 2002).

has any questions about this request, CoA Institute is happy to discuss the matter with the FOIA officer processing the request.

### **Request for a Public Interest Fee Waiver**

CoA Institute requests a waiver of all fees. FOIA, and applicable regulations, provide that the agency shall furnish requested records without or at reduced charge if “disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”<sup>7</sup> CoA Institute’s request meets this test because the federal budget and domestic sourcing requirements that may impact a large portion of it are a matter of great public interest. Currently, the process around implementation of this policy is opaque, and the public has little knowledge of how agencies are going to consistently enforce it. Therefore, disclosure of the requested information will contribute significantly to public understanding of the issue.

CoA Institute has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media.<sup>8</sup> Its staff has significant expertise in government oversight, investigative reporting, and public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through its regularly published online newsletter, memoranda, reports, or press releases.<sup>9</sup> And, as CoA Institute is a non-profit organization, as defined under Section 501(c)(3) of the Internal Revenue Code, it has no commercial interest in this request.

### **Request to Be Classified as a Representative of the News Media**

For fee status purposes, CoA Institute qualifies as a “representative of the news media.”<sup>10</sup> As the D.C. Circuit has held, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.<sup>11</sup> CoA Institute satisfies this test because it gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. It does not merely make raw information available to the public, but rather distributes distinct work products,

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<sup>7</sup> 5 U.S.C. § 552(a)(4)(A)(iii); *see also Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115–19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

<sup>8</sup> *See infra*, detailing publications and methods of dissemination.

<sup>9</sup> *See also Cause of Action*, 799 F.3d at 1125-26 (holding that public interest advocacy organizations may partner with others to disseminate their work).

<sup>10</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>11</sup> *See Cause of Action*, 799 F.3d at 1121.

including articles, blog posts, investigative reports, newsletters, press releases, congressional testimony, and statements for the record.<sup>12</sup> These distinct works are distributed to the public through various media, including the CoA Institute's website, Twitter, and Facebook. CoA Institute also provides newsletters to subscribers via e-mail.

The statutory definition of a "representative of the news media" contemplates that organizations such as CoA Institute, which electronically disseminate information and publications via "alternative media[,] shall be considered to be news-media entities."<sup>13</sup> And many federal agencies have appropriately recognized CoA Institute's news media status in connection with its FOIA requests.<sup>14</sup>

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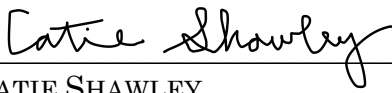
<sup>12</sup> See, e.g., COA INSTITUTE, EVADING OVERSIGHT: THE ORIGINS AND IMPLICATIONS OF THE IRM CLAIM THAT ITS RULES DO NOT HAVE AN ECONOMIC IMPACT (Jan. 2018), <http://coainst.org/2mgpYAu>; CoA Institute, *Documents Reveal Special Interest Groups Lobbied HUD for Mortgage Settlement Funds* (Aug. 8, 2017), <http://coainst.org/2yLaTyF>; CoA Institute, *The GSA Has No Records on its New Policy for Congressional Oversight Requests* (July 26, 2017), <http://coainst.org/2eHooVq>; COA INSTITUTE, SENSITIVE CASE REPORTS: A HIDDEN CAUSE OF THE IRS TARGETING SCANDAL (Mar. 2017), <http://coainst.org/2y0fbOH>; CoA Institute, *Sec. Vilsack followed ethics guidelines when negotiating his future employment*, (Feb. 3, 2017), <http://coainst.org/2mJlJe>; COA INSTITUTE, INVESTIGATIVE REPORT: PRESIDENTIAL ACCESS TO TAXPAYER INFORMATION (Oct. 2016), <http://coainst.org/2d7qTRY>; James Valvo, *There is No Tenth Exemption* (Aug. 17, 2016), <http://coainst.org/2doJhBt>; COA INSTITUTE, MEMORANDUM: LEGAL ANALYSIS OF FORMER SECRETARY OF STATE HILLARY CLINTON'S USE OF A PRIVATE SERVER TO STORE EMAIL RECORDS (Aug. 24, 2015), <http://coainst.org/2eXhXe1>; CoA Institute, *CIA too busy for transparency* (Aug. 11, 2016), <http://coainst.org/2mtzhP>; *Hearing on Revisiting IRS Targeting: Progress of Agency Reforms and Congressional Options Before the Subcomm. on Oversight, Agency Action, Fed. Rights & Fed. Courts of the S. Comm. on the Judiciary*, 114th Cong. (Aug. 5, 2015) (statement of Erica L. Marshall, Counsel, CoA Inst.), <http://coainst.org/2mJC8DH>; *Hearing on Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years Before the S. Comm. on Homeland Sec. & Gov't Affairs*, 114th Cong. (June 3, 2015) (statement of Daniel Z. Epstein, Exec. Dir., CoA Inst.), <http://coainst.org/2mrwHr1>; *Hearing on Ongoing Oversight: Monitoring the Activities of the Justice Department's Civil, Tax and Environmental and Natural Resources Divisions and the U.S. Trustee Program Before the H. Comm. on the Judiciary*, 114th Cong. (May 19, 2015) (statement of Daniel Z. Epstein, Exec. Dir., CoA Inst.), <http://coainst.org/2n7LxWG>; COA INSTITUTE, 2015 GRADING THE GOVERNMENT REPORT CARD (Mar. 16, 2015), <http://coainst.org/2as088a>; *Hearing on Potential Reforms to the Freedom of Information Act (FOIA) Before the H. Comm. on Oversight & Gov't Reform*, 114th Cong. (Feb. 27, 2015) (statement of Daniel Z. Epstein, Exec. Dir., CoA Inst.), <http://coainst.org/2lLsph8>; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com* (Sept. 8, 2014), <http://coainst.org/2aJ8sm5>; COA INSTITUTE, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS (Mar. 18, 2014), <http://coainst.org/2aFWxUZ>; COA INSTITUTE, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), <http://coainst.org/2apTwqP>; COA INSTITUTE, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I (Aug. 2, 2013), <http://coainst.org/2aJh901>; see also CoA Institute, *Newsletters*, <http://causeofaction.org/media/news/newsletter/>.

<sup>13</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>14</sup> See, e.g., FOIA Request F-133-18, U.S. Agency for Int'l Dev. (Apr. 11, 2018); FOIA Request 18-HQ-F-487, Nat'l Aeronautics & Space Admin. (Apr. 11, 2018); FOIA Request 1403076-000, Fed. Bureau of

**Record Production and Contact Information**

To facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, CoA Institute requests that those records be produced first and the remaining records be produced on a rolling basis. If you have any questions, please contact me by telephone at (202) 499-2425 or by email at [catie.shawley@causeofaction.org](mailto:catie.shawley@causeofaction.org). Thank you for your attention to this matter.

  
CATIE SHAWLEY  
LITIGATION SUPPORT ANALYST

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Investigation (Apr. 11, 2018); FOIA Request 201800050F, Exp.-Imp. Bank (Apr. 11, 2018); FOIA Request 2016-11-008, Dep't of the Treasury (Nov. 7, 2016); FOIA Requests OS-2017-00057 & OS-2017-00060, Dep't of Interior (Oct. 31, 2016); FOIA Request 2017-00497, Office of Personnel Mgmt. (Oct. 21, 2016); FOIA Request 092320167031, Ctrs. for Medicare & Medicaid Servs. (Oct. 17, 2016); FOIA Request 17-00054-F, Dep't of Educ. (Oct. 6, 2016); FOIA Request DOC-OS-2016-001753, Dept. of Commerce (Sept. 27, 2016); FOIA Request 2016-366-F, Consumer Fin. Prot. Bureau (Aug. 11, 2016); FOIA Request F-2016-09406, Dept. of State (Aug. 11, 2016); FOIA Request 2016-00896, Bureau of Land Mgmt. (Aug. 10, 2016); FOIA Request 796939, Dep't of Labor (Mar. 7, 2016); FOIA Request 2015-HQFO-00691, Dep't of Homeland Sec. (Sept. 22, 2015); FOIA Request HQ-2015-01689-F, Dep't of Energy (Aug. 7, 2015); FOIA Request 2015-OSEC-04996-F, Dep't of Agric. (Aug. 6, 2015); FOIA Request 15-05002, Sec. & Exch. Comm'n (July 23, 2015); FOIA Request 145-FOI-13785, Dep't of Justice (Jun. 16, 2015); FOIA Request 2015-26, Fed. Energy Regulatory Comm'n (Feb. 13, 2015).